## Casting Votes of the Vice-Presidents, 1789–1915

Reckoning from April 21, 1789, the day of John Adams's inaugural as Vice-President, to March 4, 1915, there appear to have been 179 instances of the use of the casting vote by the Vice-President in the Senate.[1] No attempt has hitherto been made to gather them together. All are of course recorded in the official journals of the Senate. A few have been recorded in connection with the Senate's exercise of its executive functions. As a rule, however, they have come with greater frequency (and usually unexpectedly) in the course of the Senate's proceedings on legislative matters. Of the great majority, little that is significant could be written. A small number, gaining contemporary comment because of crucial bearings on some variety of measures of a partizan nature, must always retain historic interest.

The following classification, though not arranged quite in accordance with logic or in subdivisions mutually exclusive, may yet serve as the basis for brief comment:[2]

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| I. Executive Functions: | i. Nominations | 13 |
| | ii. Treaties | 3 |
| II. Legislative Functions: | i. Elections of officers and questions of organization | 7 |
| | ii. Procedure | 39 |
| | iii. Bills and resolutions: | |
| | a. General public | 91 |
| | b. Local | 5 |
| | c. Private | 21 |
| Total | | 179 |

Where a two-thirds vote is essential for ratification, as in the case of treaties, obviously the Vice-President can have no direct influence on the final question of agreement. The subject "Treaties" (I, ii), it should accordingly be explained, concerns three votes cast on the same day (March 25, 1840), by means of which Vice-President R. M. Johnson was enabled to promote the proclamation of a treaty ratified by the Senate two years earlier (1838) with the Six Nations. The votes under "Procedure" (II, ii) were occasionally of incidental consequence. Several votes classified here were actually recorded, it may be added, while the Senate was in executive session.[3] But,

[1] Adams, 29; Jefferson, 3; Burr, 3; Clinton, 11; Gerry, 8; Tompkins, 5; Calhoun, 28; Van Buren, 4; R. M. Johnson, 14; Dallas, 19; Fillmore, 3; Breckinridge, 10; Hamlin, 7; Colfax, 13; Wilson, 1; Wheeler, 5; Arthur, 3; Morton, 4; Stevenson, 2; Hobart, 1; Sherman, 4; Marshall, 2.

[2] In devising this classification, I have been aided by Messrs. J. David Thompson and Ernest Bruncken, of the Library of Congress.

[3] *Executive Journals of the Senate*, under March 8, 1848, February 28, 1861, March 17, 1862, and January 31, 1879.

taken together, the votes under this subdivision do not lend themselves to separate consideration. "Local Bills" (II, iii, b) and "Private Bills" (II, iii, c) have so slight an historic interest as to be virtually negligible.

I. There has been no casting vote touching the subject of nominations since Vice-President Hamlin on March 17, 1862, used his right to vote for a postponement of the nomination of Edwin D. Morgan as major-general of volunteers. This was merely a matter of procedure and had no measurable effect upon the final ratification of the appointment a month later.[4] Almost all the votes in this class were used in conformity to the wishes of various Presidents for the purpose of promoting the claims of nominees to offices. Twice, however, in the hands of Vice-President Calhoun the casting ballot served effectively as a weapon against President Jackson, for Calhoun was able first (January 13, 1832) to halt the nomination of Martin Van Buren as minister to England and finally (January 25) to defeat it. The incidents of these votes were of peculiar interest inasmuch as Van Buren was at the time in London acting as our minister on a recess commission, and his rejection helped to make him Vice-President. Moreover it is altogether probable that Calhoun's partizans in the Senate provided him with the opportunity which he sought thus to assert his spite against Jackson.

II. In this general division, all votes of special consequence fall within the two subdivisions (i) and (iii, a).

(i.) As early as December 14, 1829, Calhoun determined in a divided Senate (21 to 21) the election of a chaplain. This vote passed without comment. Exactly the same sort of election was settled—the Senate dividing 30 to 30—by Vice-President Fillmore on January 9, 1850. But the question arose as to the Vice-President's power to act in such a case. Calhoun, Clay, Berrien, and some other Senators of experience discussed the subject, but approved the action of Fillmore which had behind it the earlier precedent.

On November 28, 1877, Vice-President Wheeler cast a vote favoring the motion to consider a report of the Senate Committee on Privileges and Elections in the case of William Pitt Kellogg of Louisiana. Although this vote did not directly determine the question of admitting to Senate membership in the matter of a disputed seat, it led the way to an intelligent, though inconclusive, discussion of the question of the Vice-President's right to cast his vote in such an issue. Senator Allen G. Thurman of Ohio argued vigorously against the supposed right of a Vice-President to have a vote upon the question of Senate membership. Is the Vice-President, he asked,

[4] April 15.

"a part of the House when it comes to judge of the elections, qualifications, and returns of its members? It seems to me to say that he is, is to say that the House cannot decide that question the sole right to decide which is in the House".[5] Senator Edmunds of Vermont on the other side of the issue believed that the Vice-President might lawfully cast his vote when Senate opinions were evenly balanced even over the question of possible membership. And Vice-President Wheeler took occasion to voice "no doubt of his right to vote in all cases in which the Senate is equally divided". Nevertheless, it still remains true that no Vice-President has yet been able by a vote to determine the question of admitting to membership in the Senate.

Under this subdivision belong the three casting votes of Vice-President Arthur which came early in the short but highly sensational extra session of the Senate, March 4–May 20, 1881. The Democrats at the opening of the session held a majority of votes, as they had done in the Senate for several preceding years. They were intent upon organizing the standing committees at once and proceeding with the business of nominations and treaties for which the Senate had been specially summoned. In view of the death (February 24) of the Republican Senator Matthew H. Carpenter of Wisconsin and the withdrawal to accept cabinet places under Garfield of Senators Blaine, Windom of Minnesota, and Samuel J. Kirkwood of Iowa, the Democrats were apparently not much disturbed over the question of holding control of the Senate organization. But the Republican minority under peculiarly able and experienced leadership began at the outset a determined opposition for the purpose of securing the standing committees: for a full fortnight it filibustered and delayed business. During this period it secured the good-will of two Senators of independent leanings: Senator David Davis of Illinois, who had acted usually with the Democrats, and Senator William Mahone, recently chosen from Virginia on a local issue and known as a "Readjuster". When William P. Frye of Maine arrived in Washington to take Blaine's vacant seat, the moment for action—March 18—was seen to have come. For days Senator G. H. Pendleton of Ohio had tried to obtain the Senate's consent to the Democratic plan of organization of the standing committees. When the vote on this plan was called for, it stood 37 to 37. Vice-President Arthur's ballot marked its defeat. Within a few minutes the Republicans put forward their organization plan—the so-called Anthony resolution—and won by exactly the same sort of vote, Arthur again settling the issue. While the Vice-President's third vote of March 24 was a

[5] *Congressional Record*, 45 Cong., 1 sess., VI. 737.

mere incident in dilatory procedure, it was delivered during the second phase of the struggle which ultimately failed, the attempt of the Republicans to gain sufficient strength to overturn the officers of the Senate.

(iii, a.) In this subdivision, casting votes have arisen on diverse occasions. In the first sixty years of our government, there were three such occasions that are particularly well known and have often been the subjects of historical comment. Within recent years such occasions have been comparatively rare; but one of these—that marked by the so-called Bristow Amendment (June, 1911)—deserves attention.

John Adams's first vote of July 18, 1789, cast in a balanced Senate (9 to 9) for the purpose of establishing the President's right to remove an officer without consulting the body which must originally have given its consent to the appointment, is probably still as remarkable a vote in the long series as can be found. It determined a principle that, although not undisputed and even for a time beclouded (1867–1887), is to-day a well-recognized basis for justifying the so-called power of removal. On February 20, 1811, Vice-President Clinton, acting in accordance with his duty (as he conceived it) strictly to construe the letter of the Constitution, cast a vote which killed a measure designed to renew the charter and privileges of Hamilton's first Bank of the United States. On July 28, 1846, Vice-President G. M. Dallas cast two telling votes: the first saved the so-called Walker tariff bill from falling into the hands of a special committee; the second sent it summarily to its third reading and accordingly assured its course to President Polk and the statute-book.

All these votes affected, either immediately or remotely, large interests. The three men responsible for them—Adams, Clinton, Dallas—each addressed the Senate for the purpose of justifying their votes. On only one other occasion (Tompkins, January 21, 1819) is there record of a speech from a Vice-President justifying a casting vote. If one other casting vote of conspicuous moment can be found in the early days, it was probably that of John Adams when, on April 28, 1794, he opposed effectively the third reading of a bill to suspend British imports. Had such a bill become law, it might have rendered abortive the mission of John Jay, and perhaps have brought on war with England.[6]

On three occasions within recent years the casting vote has been the subject of comment. Two of these may be at once disposed of. The single casting vote of Vice-President Hobart on February 14, 1899, eight days after the Senate had ratified the treaty with Spain,

[6] *Works* of John Adams, I. 457.

defeated the so-called Bacon Amendment, a careful formulation designed by the Senator from Georgia as a declaration of national policy toward the Philippines. With respect to a liberal policy it went a trifle further than the McEnery Resolution which it was designed to supplement. Hobart's vote recorded the Vice-President as in sympathy with the so-called Imperialist section of his party.[7] Almost exactly twelve years later (February 2, 1911) Vice-President Sherman cast three votes within the remarkably short space of half an hour. The first two of these were interesting as revealing about thirteen Republicans ("Insurgents") aligning with the Democrats in opposition to an administration measure, the ocean-mail subsidy bill. The absence of a new Democratic Senator (Clarence W. Watson of West Virginia) from his seat at the time of voting was widely commented upon, as was the fact that Senator Lorimer of Illinois, whose right to a seat had not been determined, had voted with the administration Republicans. The third vote was merely a matter of procedure, and adjourned the Senate.

The fourth (and last) casting vote of Sherman, on June 12, 1911, delivered in a divided Senate (44 to 44), forced the adoption, into an amendment to the Constitution providing for election of Senators by direct vote, of an amendment formulated by Senator Bristow of Kansas. Bristow's amendment introduced a clause which retained for the federal government the power to supervise senatorial elections. It was carried by one vote, whereas the entire amendment had to be adopted—as it was—by the necessary two-thirds majority. The situation was altogether peculiar in Senate annals. It brought impressively forward the significance of the casting vote, and led the next day (June 13) to a long discussion of the casting ballot, which was directed by Senator Bacon of Georgia. Bacon's viewpoint may be best indicated in his own language. He said:

> My proposition is that as to matters which do not relate to the ordinary business of the Senate, matters which do not relate to measures of legislation by Congress or to reciprocal or common business of the two Houses, or a matter which does not relate to any particular proceeding of the Senate, the Vice-President, not being a member of this body, has not the right to vote . . . the passage of a resolution proposing to the legislatures of the States the adoption of an amendment to the Constitution is not an act of legislation . . . . it must receive the affirmative vote of the requisite number prescribed in each House. But it has not the effect of law. It is simply the presentation of a proposition to the

[7] For the Bacon Amendment, see *Journal of the Senate*, 55 Cong., 3 sess. (1898–1899), p. 119, McEnery Resolution in *Congressional Record*, 55 Cong., 3 sess., XXXII. 1479; James A. LeRoy, *The Americans in the Philippines* (1914), II. 10–15.

tribunal which is to determine it, which is, at last, the legislatures of the States.[8]

Inasmuch as the President has nothing whatever to do with the process of an amendment to the Constitution, why, asked Senator Bacon, should the Vice-President have anything to do with the process? Senator W. J. Stone of Missouri, on the other hand, conceding that the vote might have been improperly cast, reminded the Senate that the vote came while the matter was in committee of the whole, and that at a later stage the two-thirds vote of the Senate had really terminated the issue.[9] Nothing was settled, for the discussion, coming the day after the vote, induced no reconsideration of the vote. But the discussion was sufficiently extensive and thoughtful to be ranked with that earlier discussion in November, 1877, on a somewhat different phase of the same general theme.

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[8] *Congressional Record*, 62 Cong., 1 sess., XLVII., pt. II., pp. 1949–1950.
[9] *Ibid.*, p. 1957.